

specified by the Farm Credit Administration shall constitute a waiver of any objections to the proposed minimum capital ratios or the deadline for their achievement.

(c) *Decision.* After the close of the institution's response period, the Farm Credit Administration will decide, based on a review of the institution's response and other information concerning the institution, whether individual minimum capital ratios should be established for the institution and, if so, the ratios and the date the requirements will become effective. The institution will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish individual minimum capital requirements for the institution.

(d) *Submission of plan.* The decision may require the institution to develop and submit to the Farm Credit Administration, within a time period specified, an acceptable plan to reach the minimum capital ratios established for the institution by the date required.

(e) *Reconsideration based on change in circumstances.* If, after the Farm Credit Administration's decision in paragraph (c) of this section, there is a change in the circumstances affecting the institution's capital adequacy or its ability to reach the required minimum capital ratios by the specified date, either the institution or the Farm Credit Administration may propose a change in the minimum capital ratios for the institution, the date when the minimums must be achieved, or the institution's plan (if applicable). The Farm Credit Administration may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the Farm Credit Administration's original decision and any plan required under that decision shall continue in full force and effect.

**§ 615.5353 Relation to other actions.**

In lieu of, or in addition to, the procedures in this subpart, the required minimum capital ratios for an institution may be established or revised through a written agreement or cease and desist proceedings under part C of

title V of the Act, or as a condition for approval of an application.

**§ 615.5354 Enforcement.**

An institution that does not have or maintain the minimum capital ratios applicable to it, whether required in subparts H and K of this part, in a decision pursuant to this subpart, in a written agreement or temporary or final order under part C of title V of the Act, or in a condition for approval of an application, or an institution that has failed to submit or comply with an acceptable plan to attain those ratios, will be subject to such administrative action or sanctions as the Farm Credit Administration considers appropriate. These sanctions may include the issuance of a capital directive pursuant to subpart M of this part or other enforcement action, assessment of civil money penalties, and/or the denial or condition of applications.

**Subpart M—Issuance of a Capital Directive**

SOURCE: 62 FR 4449, Jan. 30, 1997, unless otherwise noted.

**§ 615.5355 Purpose and scope.**

(a) This subpart is applicable to proceedings by the Farm Credit Administration to issue a capital directive under sections 4.3(b) and 4.3A(e) of the Act. A capital directive is an order issued to an institution that does not have or maintain capital at or greater than the minimum ratios set forth in §§ 615.5205, 615.5330, and 615.5335; or established for the institution under subpart L, by a written agreement under part C of title V of the Act, or as a condition for approval of an application. A capital directive may order the institution to:

- (1) Achieve the minimum capital ratios applicable to it by a specified date;
- (2) Adhere to a previously submitted plan to achieve the applicable capital ratios;
- (3) Submit and adhere to a plan acceptable to the Farm Credit Administration describing the means and time schedule by which the institution shall achieve the applicable capital ratios;
- (4) Take other action, such as reduction of assets or the rate of growth of

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assets, restrictions on the payment of dividends or patronage, or restrictions on the retirement of stock, to achieve the applicable capital ratios, or reduce levels of interest rate and other risk exposures, or strengthen management expertise, or improve management information and measurement systems; or

(5) A combination of any of these or similar actions.

(b) A capital directive may also be issued to the board of directors of an institution, requiring such board to comply with the requirements of section 4.3A(d) of the Act prohibiting the reduction of permanent capital.

(c) A capital directive issued under this rule, including a plan submitted under a capital directive, is enforceable in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final as defined in section 5.25 of the Act. Violation of a capital directive may result in assessment of civil money penalties in accordance with section 5.32 of the Act.

[62 FR 4449, Jan. 30, 1997, as amended at 63 FR 39229, July 22, 1998]

### §615.5356 Notice of intent to issue a capital directive.

The Farm Credit Administration will notify an institution in writing of its intention to issue a capital directive. The notice will state:

(a) The reasons for issuance of the capital directive;

(b) The proposed contents of the capital directive, including the proposed date for achieving the minimum capital requirement; and

(c) Any other relevant information concerning the decision to issue a capital directive.

### §615.5357 Response to notice.

(a) An institution may respond to the notice by stating why a capital directive should not be issued and/or by proposing alternative contents for the capital directive or seeking other appropriate relief. The response shall include any information, mitigating circumstances, documentation, or other relevant evidence that supports its position. The response may include a plan for achieving the minimum capital ra-

tios applicable to the institution. The response must be in writing and delivered to the Farm Credit Administration within 30 days after the date on which the institution received the notice. In its discretion, the Farm Credit Administration may extend the time period for good cause. The Farm Credit Administration may shorten the 30-day time period:

(1) When, in the opinion of the Farm Credit Administration, the condition of the institution so requires, provided that the institution shall be informed promptly of the new time period;

(2) With the consent of the institution; or

(3) When the institution already has advised the Farm Credit Administration that it cannot or will not achieve its applicable minimum capital ratios.

(b) Failure to respond within 30 days or such other time period as may be specified by the Farm Credit Administration shall constitute a waiver of any objections to the proposed capital directive.

### §615.5358 Decision.

After the closing date of the institution's response period, or receipt of the institution's response, if earlier, the Farm Credit Administration may seek additional information or clarification of the response. Thereafter, the Farm Credit Administration will determine whether or not to issue a capital directive, and if one is to be issued, whether it should be as originally proposed or in modified form.

### §615.5359 Issuance of a capital directive.

(a) A capital directive will be served by delivery to the institution. It will include or be accompanied by a statement of reasons for its issuance.

(b) A capital directive is effective immediately upon its receipt by the institution, or upon such later date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, or terminated by the Farm Credit Administration.

### §615.5360 Reconsideration based on change in circumstances.

Upon a change in circumstances, an institution may request the Farm